



JON M. HUNTSMAN, JR.
Governor

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Lieutenant Governor

State of Utah

DEPARTMENT OF NATURAL RESOURCES

MICHAEL R. STYLER
Executive Director

Division of Water Rights

JERRY D. OLDS
State Engineer/Division Director

Incumbent
S0410038
cc: Lynn
Tom

ORDER OF THE STATE ENGINEER FOR STREAM ALTERATION APPLICATION NUMBER 08-63-02SA

This **ORDER** is issued pursuant to statute and in accord with the statutory criteria for approval of a stream alteration application that are described at UTAH CODE ANN. § 73-3-29. The State Engineer has determined that this application does meet the necessary legal criteria to **ORDER** the approval of the application based upon the following Findings of Fact and reasoning set forth in the Discussion.

FINDINGS OF FACT

1. The application was received by the Division of Water Rights ("Division") on February 22, 2008, and circulated to other pertinent governmental agencies for period of 20 calendar days, said period concluding on March 13, 2008.
2. The application contains the following information:
 - The stated description of the proposed project is: Proposed plan of operation for sampling, mining for placer gold. See forest services operation description.
 - The stated purpose of the proposed project is: Mining Claim Law of 1872, 30 U.S.C. 88 22-42.
3. Division personnel attempted a site visit, however the road at the time was snow packed.
4. The Division received comments or objections on the proposed project from:
 - Kirk Forbush, Division of Water Rights
 - Barry Tripp, Utah State Lands
 - Tom Munson, Division of Oil, Gas, and Mining
 - Terry Johnson, Army Corps of Engineers
 - Janice Reed-Campbell, State History
 - Terry Krasko, Fishlake National Forest

The comments or objections received by the Division are summarized as follows:

- Okay with the project with some requirements to keep the stream in good condition with vegetation restoration upon completion.
- This project does not impact state sovereign lands.
- Two concerns: 1. Will future floods cause the material that is put back in the dredged voids to be transported downstream? 2. When the operator builds dams to catch fine material, how will these areas be cleaned up and should the reject material be buried below and larger graded riprap replaced in voids?



- This operation may take place on a sampling basis. The applicant will need a Nationwide or Individual permit from the Corps to do more extensive mining in the creek should this sample testing prove beneficial.
- If historical or archaeological resources are found during construction, please notify Division of State History.
- This project will be allowed on a **one-year basis**, with a site inspection occurring after the first year of operation to assess stream conditions.

DISCUSSION

1. Based on a review of the Division's water rights records and/or a review of the application by personnel of the Division's regional office, it is the opinion of the State Engineer that the project will not impair vested water rights.
2. It is the opinion of the State Engineer that the project will not unreasonably or unnecessarily affect recreational use or the natural stream environment. This will be reassessed following a site visit after the proposed activities are conducted in the first year. **If this office deems that this operation does not unreasonably or unnecessarily affect the natural stream, an extension for another year may be requested.**
3. It is the opinion of the State Engineer that the project will not unreasonably or unnecessarily endanger aquatic wildlife.
4. It is the opinion of the State Engineer that the project will not unreasonably or unnecessarily diminish the natural channel's ability to conduct high flows.

ORDER

Stream Channel Alteration Application No. 08-63-02SA submitted in the name of Brook H. Knotts, applicant, for the proposed plan of operation for sampling and mining associated with a tributary to Rosebud Creek (Sevier Canyon), a natural stream located in Sevier County, Utah, is hereby APPROVED, contingent upon the conditions outlined in this **ORDER**. This approval also constitutes compliance with Section 404 (e) of the Clean Water Act (33 USC 1344) pursuant to General Permit 040 issued to the State of Utah by the U.S. Army Corp of Engineers on May 14, 2004. The applicant is hereby authorized to conduct the work detailed in the application and supporting documentation, as described in this **ORDER**. Any modification or addition to the work may require additional authorization and/or application resubmittal.

1. The expiration date of this order is **April 3, 2009**. The expiration date may be extended, at the State Engineer's discretion, by submitting a written request outlining the need for the extension and the reasons for the delay in completing the proposed stream alteration.
2. A copy of this order must be kept onsite at any time the work authorized under this order is in progress.

3. In order for a site evaluation to occur this office must receive notification of the completion of this work.
4. Photographs of the site(s) must be taken prior to any work. These photos must be produced for this office when requested in order to evaluate the conditions prior to the proposed activities.
5. The applicant will need a Nationwide or Individual permit from the Army Corps of Engineers to do more extensive mining in the creek should this sample testing prove beneficial.
6. Best Management Practices should be implemented and maintained during any streamside or instream work to minimize sedimentation, temporary erosion of stream banks, and needless damage or alteration to the streambed.
7. Bedding and backfill material may not be more free draining than existing soils in stream channels, banks, and riparian zones. Loosely compacted material may act to violate this condition. Bedding and backfill materials must be either fine grained or constructed in such a manner that it does not act as a drain. This shall include placing clay cutoff collars, or utilizing compaction techniques.
8. Machinery must be properly cleaned and fueled offsite prior to construction.
9. Erosion control, revegetation, and noxious weed control must be implemented and monitored until revegetation becomes well established. Success of these measures must also be reported prior to the compliance inspection. This is particularly important for all disturbed areas, including fill, in order to prevent sediments from entering flowing water.
10. Excavated material and construction debris may not be wasted in any stream channel or placed in flowing waters, this will include material such as grease, oil, joint coating, or any other possible pollutant. Excess materials must be wasted at an upland site well away from any channel. Construction materials, bedding material, excavated material, etc. may not be stockpiled in riparian or channel areas.
11. Approval of this application does not authorize trespass, easements, rights-of-way, or any other access and land use permits. It is the responsibility of the applicant to obtain any such authorizations as may be necessary for this proposal.
12. Riprap must consist of only clean, properly sized angular rock, which must be keyed deeply into the streambed to prevent undercutting. A filter must be placed behind if necessary (i.e., if soils are fine grained, non-cohesive, and/or erodible). Demolition debris or refuse will not be allowed, nor material such as bricks, concrete, asphaltic material [either natural (tar sand, oil shale, etc.) or man made].
13. Ingress and egress access should be kept to a minimum.
14. Fill materials should be free of fines, waste, pollutants, and noxious weeds/seeds.

15. Disturbed riparian areas must be planted with naturally occurring vegetation. Plantings shall be protected from grazing animals by fencing. If beaver or other rodent damage should occur, other methods such as metal collars placed around the trees must be included.
16. Impacts to the stream channel and surrounding environment must be minimized. Vegetation should not be destroyed, but if some disturbance is necessary, then revegetating with native species will be required, especially in the case of woody shrubs. The channel contours and configuration must not be changed except in the case of bank contouring for stabilization purposes.
17. Whenever an applicant causes the water turbidity in an adjacent surface water to increase 10 NTU's or more, the applicant shall notify the Division of Water Quality.
18. If historical or archaeological resources such as human remains (skeletons), prehistoric arrowheads/spear points, waste flakes from stone tool production, pottery, ancient fire pits, historical building foundations/remains, historical artifacts (glass, ceramic metal, etc.) are found during construction, call the Division of Water Rights at 801-538-7375 and Matt Seddon of the Division of State History at 801-533-3555.
19. Within 30 days after the completion of this project, the attached compliance certification form must be completed and returned to the U.S. Army Corps of Engineers. Failure to return this compliance certification form would invalidate U.S. Army Corps of Engineers General Permit 040, thereby placing the applicant in violation of Section 404 of the Clean Water Act.

Your contact with the Division is Roddy Pirouznia, who can be reached at telephone number (801) 538-7375.

This **ORDER** is subject to the provisions of UTAH ADMIN. CODE R. 655-6-17 of the Division of Water Rights and to UTAH CODE ANN. §§ 63-46b-13 and 73-3-14, which provide for persons or parties with legal standing to file either a Request for Reconsideration with the State Engineer or an appeal with the appropriate District Court. A Request for Reconsideration must be filed with the State Engineer within 20 days of the date of this **ORDER**. However, a Request for Reconsideration is not a prerequisite to filing a court appeal. A court appeal must be filed within 30 days after the date of this **ORDER**, or if a Request for Reconsideration has been filed, within 30 days after the date the Request for Reconsideration is denied. A Request for Reconsideration is considered denied when no action is taken within 20 days after the Request is filed.

Dated this 4 day of April, 2008.



David K. Marble, P.E.
Assistant State Engineer

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Enclosure

Mailed a copy of the foregoing Order this 4 day of April, 2008, to:

Brook H Knotts
P.O. Box 1335
Salem, UT 84653

Corps of Engineers
Kirk Forbush - Regional Engineer
Dave Ruiter - EPA
Carolyn Wright - Dept. of Natural Resources
Bruce Bonebrake - Regional Wildlife Habitat Manager
Matt Seddon - State History
Tom Munson - Oil, Gas, & Mining
Terry Krasko - Fishlake National Forest

By: Judy Mattson
Judy Mattson
Secretary